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10
11 **UNITED STATES DISTRICT COURT**
12 **DISTRICT OF ARIZONA**
13

14 **Nintendo of America, Inc., a**
15 **Washington Corporation**

16 Plaintiffs,

17 vs.

18 **Jacob Mathias and Cristian Mathias,**
19 **husband and wife; Mathias Designs,**
20 **L.L.C. d/b/a www.LoveROMs.com and**
21 **www.LoveRETRO.co**

22 Defendants.
23

24 **Case No.: 2:18-CV-02282-SPL**

25 **Defendants Jacob and Cristian**
26 **Mathias and Mathias Designs, LLC's**
27 **Answer to Plaintiff Nintendo of**
28 **America, Inc.'s First Amended**
Complaint

The Honorable Steven P. Logan
(Jury Trial Demanded)

21 Defendants Jacob and Cristian Mathias ("Mathias") and Mathias Designs, LLC
22 ("Mathias Designs") (collective "Mathias Parties") hereby answer Plaintiff Nintendo
23 of America, Inc.'s ("Nintendo") First Amended Complaint against the Mathias
24 Parties. For this pleading, if a statement is made on behalf of either Mathias or
25 Mathias Designs, only the party identified will be the affirming party. When a
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1 statement is made on behalf of the Mathias Parties, it will be considered an
2 affirmation on behalf of both Mathias and Mathias Designs.

3
4 **ANSWER**

5 **PRELIMINARY STATEMENT**

6
7 1. Mathias hereby ADMITS the allegations in Paragraph 1 of Nintendo's
8 First Amended Complaint.

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10 2. Jacob Mathias has insufficient information and knowledge of the truth
11 of the facts alleged in Paragraph 2 of Nintendo's First Amended Complaint, and
12 therefore can neither ADMIT nor DENY the allegations set forth in Paragraph 2.

13 3. As Nintendo alleged in Paragraph 3, Mathias Designs ADMITS that it
14 owns and operates two websites under the domains www.LoveRoms.com and
15 www.LoveRETRO.co. The Mathias parties DENY all remaining allegations
16 Paragraph 3 of Nintendo's First Amended Complaint.

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18 4. The Mathias Parties hereby DENY the allegations in Paragraph 4 of
19 Nintendo's First Amended Complaint.

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21 5. The Mathias Parties hereby DENY the allegations in Paragraph 5 of
22 Nintendo's First Amended Complaint.

23 6. The Mathias Parties hereby DENY the allegations in Paragraph 6 of
24 Nintendo's First Amended Complaint.

THE PARTIES

7. The Mathias Parties are without sufficient information and knowledge as to the truth of the facts alleged in Paragraph 7 of Nintendo's First Amended Complaint, and therefore can neither ADMINT nor DENY the allegations set forth in Paragraph 7.

8. Mathias hereby ADMITS that they are natural persons who reside in the District. Jacob Mathias hereby DENIES all remaining allegations in Paragraph 8 of Nintendo's First Amended Complaint.

9. The Mathias Parties hereby ADMIT the allegations in Paragraph 9 of Nintendo's First Amended Complaint.

10. The Mathias Parties hereby ADMIT the allegation in the first sentence of Paragraph 10. The Mathias Parties hereby DENY all remaining allegations in Paragraph 10 of Nintendo's First Amended Complaint.

11. The Mathias Parties hereby DENY the allegations in Paragraph 11 of Nintendo's First Amended Complaint.

JURISDICTION AND VENUE

12. The Mathias Parties hereby ADMIT the allegations in Paragraph 12 of Nintendo's First Amended Complaint.

13. The Mathias Parties hereby ADMIT the allegations in Paragraph 13 of Nintendo's First Amended Complaint.

14. The Mathias Parties hereby ADMIT the allegations in Paragraph 14 of Nintendo's First Amended Complaint.

FACTS COMMON TO ALL CLAIMS

15. The Mathias Parties hereby DENY the allegations in Paragraph 15 of Nintendo's First Amended Complaint.

16. The Mathias Parties have insufficient information and knowledge of the truth of the facts alleged in Paragraph 16 of Nintendo's First Amended Complaint, and therefore can neither ADMIT nor DENY the allegations set forth in Paragraph 16.

17. The Mathias Parties have insufficient information and knowledge of the truth of the facts alleged in Paragraph 17 of Nintendo's First Amended Complaint, and therefore can neither ADMIT nor DENY the allegations set forth in Paragraph 17.

18. The Mathias Parties hereby DENY the allegations in Paragraph 18 of Nintendo's First Amended Complaint.

19. The Mathias Parties have insufficient information and knowledge of the truth of the facts alleged in Paragraph 19 of Nintendo's First Amended Complaint, and therefore can neither ADMIT nor DENY the allegations set forth in Paragraph 19.

20. The Mathias Parties have insufficient information and knowledge of the truth of the facts alleged in Paragraph 20 of Nintendo's First Amended Complaint, and therefore can neither ADMIT nor DENY the allegations set forth in Paragraph 20.

21. The Mathias Parties have insufficient information and knowledge of the truth of the facts alleged in Paragraph 21 of Nintendo's First Amended Complaint, and therefore can neither ADMIT nor DENY the allegations set forth in Paragraph 21.

1 22. The Mathias Parties have insufficient information and knowledge of the
2 truth of the facts alleged in Paragraph 22 of Nintendo's First Amended Complaint,
3 and therefore can neither ADMIT nor DENY the allegations set forth in Paragraph 22.

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5 23. The Mathias Parties have insufficient information and knowledge of the
6 truth of the facts alleged in Paragraph 23 of Nintendo's First Amended Complaint,
7 and therefore can neither ADMIT nor DENY the allegations set forth in Paragraph 23.

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9 24. The Mathias Parties have insufficient information and knowledge of the
10 truth of the facts alleged in Paragraph 24 of Nintendo's First Amended Complaint,
11 and therefore can neither ADMIT nor DENY the allegations set forth in Paragraph 24.

12 25. The Mathias Parties have insufficient information and knowledge of the
13 truth of the facts alleged in Paragraph 25 of Nintendo's First Amended Complaint,
14 and therefore can neither ADMIT nor DENY the allegations set forth in Paragraph 25.

15
16 26. The Mathias Parties have insufficient information and knowledge of the
17 truth of the facts alleged in Paragraph 26 of Nintendo's First Amended Complaint,
18 and therefore can neither ADMIT nor DENY the allegations set forth in Paragraph 26.

19 27. The Mathias Parties hereby DENY the allegations in Paragraph 27 of
20 Nintendo's First Amended Complaint.

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22 28. The Mathias Parties hereby ADMIT that the content of the graphic
23 shown in Paragraph 28 speaks for itself. The Mathias Parties hereby DENY all
24 remaining allegations in Paragraph 28 of Nintendo's First Amended Complaint.

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26 29. The Mathias Parties hereby DENY the allegations in Paragraph 29 of
27 Nintendo's First Amended Complaint.
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1 30. The Mathias Parties hereby ADMIT that the content of the graphic
2 shown in Paragraph 30 speaks for itself. The Mathias Parties hereby DENY all
3 remaining allegations in Paragraph 30 of Nintendo's First Amended Complaint.

4
5 31. The Mathias Parties hereby ADMIT that the content of the graphic
6 shown in Paragraph 31 speaks for itself. The Mathias Parties hereby DENY all
7 remaining allegations in Paragraph 31 of Nintendo's First Amended Complaint.

8 32. The Mathias Parties hereby DENY the allegations in Paragraph 32 of
9 Nintendo's First Amended Complaint.

10
11 33. The Mathias Parties hereby ADMIT that the content of the graphic
12 shown in Paragraph 33 speaks for itself. The Mathias Parties hereby DENY all
13 remaining allegations in Paragraph 33 of Nintendo's First Amended Complaint.

14
15 34. The Mathias Parties hereby ADMIT that the content of the graphic
16 shown in Paragraph 34 speaks for itself. The Mathias Parties hereby DENY all
17 remaining allegations in Paragraph 34 of Nintendo's First Amended Complaint.

18 35. The Mathias Parties hereby ADMIT that the content of the graphic
19 shown in Paragraph 35 speaks for itself. The Mathias Parties hereby DENY all
20 remaining allegations in Paragraph 35 of Nintendo's First Amended Complaint.

21
22 36. The Mathias Parties hereby ADMIT that the content of the graphic
23 shown in Paragraph 36 speaks for itself. The Mathias Parties hereby DENY all
24 remaining allegations in Paragraph 36 of Nintendo's First Amended Complaint.

25
26 37. The Mathias Parties hereby ADMIT that the content of the graphic
27 shown in Paragraph 37 speaks for itself. The Mathias Parties hereby DENY all
28 remaining allegations in Paragraph 37 of Nintendo's First Amended Complaint.

1 47. The Mathias Parties hereby DENY the allegations in Paragraph 47 of
2 Nintendo's First Amended Complaint.

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4 48. The Mathias Parties hereby DENY the allegations in Paragraph 48 of
5 Nintendo's First Amended Complaint.

6 49. The Mathias Parties hereby DENY the allegations in Paragraph 49 of
7 Nintendo's First Amended Complaint.

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9 50. The Mathias Parties hereby DENY the allegations in Paragraph 50 of
10 Nintendo's First Amended Complaint.

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12 51. The Mathias Parties hereby DENY the allegations in Paragraph 51 of
13 Nintendo's First Amended Complaint.

14 52. The Mathias Parties hereby DENY the allegations in Paragraph 52 of
15 Nintendo's First Amended Complaint.

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17 **COUNT TWO – TRADEMARK INFRINGEMENT**

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19 53. The Mathias Parties incorporate by reference the responses stated in
20 prior paragraphs 1-52.

21 54. The Mathias Parties have insufficient information and knowledge of the
22 truth of the facts alleged in Paragraph 54 of Nintendo's First Amended Complaint,
23 and therefore can neither ADMIT nor DENY the allegations set forth in Paragraph 54.

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25 55. The Mathias Parties hereby DENY the allegations in Paragraph 55 of
26 Nintendo's First Amended Complaint.

1 56. The Mathias Parties hereby DENY the allegations in Paragraph 56 of
2 Nintendo's First Amended Complaint.

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4 57. The Mathias Parties hereby DENY the allegations in Paragraph 57 of
5 Nintendo's First Amended Complaint.

6 58. The Mathias Parties hereby DENY the allegations in Paragraph 58 of
7 Nintendo's First Amended Complaint.

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9 59. The Mathias Parties hereby DENY the allegations in Paragraph 59 of
10 Nintendo's First Amended Complaint.

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12 60. The Mathias Parties hereby DENY the allegations in Paragraph 60 of
13 Nintendo's First Amended Complaint.

14 61. The Mathias Parties hereby DENY the allegations in Paragraph 61 of
15 Nintendo's First Amended Complaint.

16
17 62. The Mathias Parties hereby DENY the allegations in Paragraph 62 of
18 Nintendo's First Amended Complaint.

19
20 **COUNT THREE – UNFAIR COMPETITION**

21 63. The Mathias Parties incorporate by reference the responses stated in
22 prior paragraphs 1-62

23
24 64. The Mathias Parties hereby DENY the allegations in Paragraph 64 of
25 Nintendo's First Amended Complaint.

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27 65. The Mathias Parties hereby DENY the allegations in Paragraph 65 of
28 Nintendo's First Amended Complaint.

1 66. The Mathias Parties hereby DENY the allegations in Paragraph 66 of
2 Nintendo's First Amended Complaint.

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4 67. The Mathias Parties hereby DENY the allegations in Paragraph 67 of
5 Nintendo's First Amended Complaint.

6 **AFFIRMATIVE DEFENSES**

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8 **FIRST AFFIRMATIVE DEFENSE**

9 1. Nintendo's claims are barred by waiver.

10 **SECOND AFFIRMATIVE DEFENSE**

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12 2. Nintendo's claims are barred by laches and estoppel.

13 **THIRD AFFIRMATIVE DEFENSE**

14 3. Nintendo's claims are barred by acquiescence.

15 **FOURTH AFFIRMATIVE DEFENSE**

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17 4. Nintendo's claims are barred by the unclean hands doctrine.

18 **FIFTH AFFIRMATIVE DEFENSE**

19
20 5. Nintendo's claims fail to state a claim upon which relief can be granted.

21 **SIXTH AFFIRMATIVE DEFENSE**

22 6. Nintendo's claims are barred by the pertinent statute of limitations.

23 **SEVENTH AFFIRMATIVE DEFENSE**

24
25 7. Nintendo has not suffered any damages because of the acts Nintendo alleged
26 the Mathias Parties committed.

EIGHTH AFFIRMATIVE DEFENSE

8. Nintendo's claims are barred because the Nintendo failed to mitigate any damages that they allegedly suffered.

NINTH AFFIRMATIVE DEFENSE

9. Nintendo's claim for contributory or vicarious copyright infringement is improper under the law in that any use of Nintendo's computer code either directly or by third parties constitutes fair use of the code.

TENTH AFFIRMATIVE DEFENSE

10. Nintendo's claim for trademark infringement is improper under the law in that any use of Nintendo's trademarks was fair and nominative use.

ELEVENTH AFFIRMATIVE DEFENSE

11. Nintendo's claim for unfair competition is improper under the law in that the Mathias Parties have competed fairly in the marketplace through independent development of a website that has caused the Nintendo no damage.

TWELFTH AFFIRMATIVE DEFENSE

12. Nintendo's claims against Mathias are improper in that Mathias has performed none of the alleged acts above and that Mathias is not an alter ego of Mathias Designs. To the extent that any act alleged above occurred, Mathias Designs was acting only in its corporate capacity and not individually through Mathias.

THIRTEENTH AFFIRMATIVE DEFENSE

13. Any loss, injury, damage or detriment actually suffered or sustained by Nintendo was directly and proximately caused and contributed to by the breach, conduct, acts, omissions, activities, carelessness, recklessness, negligence, fraudulent or intentional misconduct or actions of parties other than any of the Mathias Parties.

PRAYER FOR RELIEF

WHEREFORE, the Mathias Parties pray as follows:

1. For a judgment denying all claims against the Mathias Parties as alleged above by Nintendo and finding in favor of the Mathias Parties;
2. For a judgment and declaration that Mathias Designs' operation of its website does not infringe any rights owned by Nintendo;
3. For a decree enjoining and restraining Nintendo from all further charges of infringement and violations of rights
4. For the Mathias' Parties attorneys' fees;
5. For the Mathias Parties' costs of suit incurred; and
6. For any other and further relief as the Court deems just and proper.

Dated this 12th day of September, 2018.

Law Office of Lance C. Venable, PLLC

/s/Lance C. Venable

Lance C. Venable SBN 017074

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Attorney for Defendants

CERTIFICATE OF SERVICE

☒ I hereby certify that on September 12, 2018, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing.

s/ Lance C. Venable